

Chapter 2: Appeals Conferences and Optional Briefing

For Business Tax and Fee appeals,
including Sales and Use Tax appeals

Purpose

- Purpose of appeals conference and optional briefing provisions:
 - Further develop factual and legal issues for the Board's consideration.
 - Provide additional briefing time.
 - Allow taxpayers to respond to new issues raised in reply briefs.

Overview of Article 6

- Overview of article 6's appeals conference process:
 - Scheduling and noticing.
 - Conducting the conference.
 - Post conference submittals.
 - Decisions and Recommendations (D&Rs).

Scheduling

- Scheduling appeals conferences:
 - Location of appeals conferences.
 - Rescheduling and postponing appeals conferences.
 - The repealed Rules of Practice (ROP) only allowed one-postponement.

Expediting

- How to expedite the appeals conference process:
 - Agree to conduct the appeals conference in Sacramento.
 - Agree to telephone or video appeals conference.
 - Agree to appear on shortened notice.

The Conferences

- Conducting appeals conferences:
 - Parties to appeals conferences.
 - Conference holder's duty of neutrality/objectivity.
 - Non-adversarial nature of appeals conferences.

More on Conducting

- Submitting additional evidence, arguments, and responses.
- The repealed ROP automatically granted each party an additional 15 days to respond to additional documents. Now, parties must request permission.

Decisions and Recommendations

- Preparation of D&Rs:
 - Requirements (issues, positions, law and facts, analysis, conclusions and recommendations, other relevant information).
 - The ROP did not prescribe the contents of D&Rs.

Reconsideration

- Taxpayers and other agencies may request reconsideration of D&Rs and oral Board hearings.
- The ROP did not explain reconsideration.

Post-Conference Notices

- Post-appeals conference notices issued if:
 - No request for oral Board hearing or reconsideration by any party; or
 - Request for discretionary oral hearing denied.
 - There is an exception for related, resale certificate appeals.

Overview of Article 7

- Overview of article 7's optional briefing process:
 - Notice of hearing issued.
 - Taxpayer's and other agency's opening briefs filed.
 - Any party, including the Department, may file a reply brief to another party's opening brief.
 - Other parties may file ***limited*** responses to reply briefs.

Briefing Sales and Use Tax Appeals

For Sales and Use Tax appeals:

- The taxpayer may file an opening brief.
- The Department may file a reply brief.
- The taxpayer may file a response, if limited to addressing new issues or arguments raised in the Department's reply brief.

Brief Requirements

- Article 7's requirements for briefs:
 - Formatting.
 - Page limitations.
 - Curing defects.

Old vs. New Briefing Schedules

- Article 7's new briefing schedule:
 - New: 55/35/20 briefing process.
 - Old: 45/30 briefing process.

Filing

- Filing Briefs:
 - Traditional mail.
 - Personal delivery to HQ in Sacramento.
 - Electronic filing added.

Unrepresented Parties

- Unrepresented parties may:
 - File their opening briefs at their oral Board hearing.
 - Participate in ***new*** Board-approved pro bono or clinical programs.

Additional Briefing Requests

- Requests for additional briefing:
 - Board and Appeals Division (chapter 2).
 - Board, Appeals Division, and Board Members (chapter 5).

Amicus Briefs

- Filing and responding to non-party (amicus) briefs.
 - New: 20/10 non-party briefing process.
 - Old: 30/15 non-party briefing process.

Extensions

- Chief Counsel may grant extensions of time to file briefs:
 - Reasonable cause requirement.
 - Other conforming extensions.

Highlights

- Ways to expedite appeals conferences.
- Prescribe contents of D&Rs.
- Briefing process accommodates taxpayers participating in pro-bono or clinical programs.

Wrap Up

- Goals are to:
 - Create uniform procedures.
 - Increase transparency.
 - Clarify expectations.
 - Improve customer relations.

- Next Up: Chapter 3 – Pre-Board Action Review of State-Assessed Property and Private Railroad Car Tax Appeals.

References

- California Code of Regulations, title 18, section 5000 et seq.
- BOE Rules for Tax Appeals and history:
<http://www.boe.ca.gov/regs/timelineCAtax.htm>.